

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 419/Del/1994 : Asstt. Year: 1990-91

M/s Pawan Hans Helicopters Ltd., Corporate Office, Safdarjung Airport, New Delhi	Vs	DCIT, Special Range-20, New Delhi
(APPELLANTT)		(RESPONDENT)
PAN No. AAACP1561A		

ITA No. 319/Del/2001 : Asstt. Year: 1995-96

M/s Pawan Hans Helicopters Ltd., Corporate Office, Safdarjung Airport, New Delhi	Vs	DCIT, Special Range-27, New Delhi
(APPELLANTT)		(RESPONDENT)
PAN No. AAACP1561A		

Assessee by : Sh. Ved Jain, Adv.

Revenue by : Ms. Pramita M. Biswas, CIT DR

Date of Hearing: 30.06.2021

Date of Pronouncement: 14.07.2021
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the order of Id. CIT (A)-VII, New Delhi dated 18.11.1993 and the order of Id. CIT (A)-XIV, New Delhi dated 30.11.2000.

2. In ITA No. 419/Del/1994, following grounds have been raised by the assessee:

"1. That the Id. CIT (A) has erred in law and on facts in upholding disallowance of interest aggregating

Rs.24,34,72,443/- due and payable to the Government of India and in directing that the deduction be allowed not on accrual but on actual payment of the interest."

3. In ITA No. 319/Del/2001, following grounds have been raised by the assessee:

"1. That the Id. CIT (A) has erred in law and on facts in confirming disallowance of interest payable to the Government of India amounting to Rs.23,79,41,269/-

2. That the Id. CIT (A) has erred in law and on facts in upholding disallowance of depreciation on Westland Helicopters amounting to Rs.57,60,034/-."

Interest due to Government of India:

4. The brief facts of the case are that Pawan Hans Limited (initial named as Helicopter Corporation of India Ltd.) was incorporated in 1985 as a Government Company under the Company Act, 1956 primarily to meet the long term requirements of ONGC to provide the helicopter services in its critical offshore exploration work. The Cabinet Committee on Economic Affairs (CCEA) on 14.03.1986 had approved proposal of Ministry of Civil Aviation (MoCA) for purchase of 42 helicopters, 21 Westland and 27 Dauphin Helicopters.

5. The assessee acquired these helicopters during the years 1986-88 at a cost of Rs.250.90 Crores, funded from the Grant/Aid of Rs.228.08 Crores from UK Government (Rs.130.91 Crores) and France Government (Rs.97.17 Crores) to Government of India. The balance of Rs.22.82 crores were towards spares engines and inventory to be procured directly by the assessee. The Ministry of Finance releases payment in

Foreign Exchange on behalf of the assessee to the manufacturers viz., M/s Westland Helicopters Limited U.K. and M/s Aerospatiale, France from time to time. The assessee company was required to deposit the rupee equivalent of these Foreign exchange payments so released along with the commission and incidental charges of 1% ad valorem and crown agent charges payable to Ministry of Finance. For any delay in deposit of the amount due, the Ministry of Finance claims interest at the rate of 12% per annum for the first thirty days and 18% per annum for the balance period till the amount due is deposited.

6. Accordingly, in the assessment year 1990-91, the assessee was required to deposit the rupee equivalent computed at basic conversion rates of the foreign exchange payments released upto the period ended 31.3.1990 amounting to Rs.2,48,25,01,590/- into the Government treasury. The assessee could, however, deposit only Rs.1,02,87,44,072/- leaving a shortfall of Rs. 1,45,37,57,518/-. The balance is appearing in the balance sheet. The interest due at the prescribed rates along with commission and incidental charges @ 1% advalorem and crown agent charges amounting in all to Rs. 26,95,58,643/- for the year and Rs.71,75,42,855/- (Net) till 31st March, 1990 has not been provided in the accounts as the Ministry of Civil Aviation had requested the Ministry of Finance to waive the interest on such belated payments and other related charges. The waiver of interest was claimed on the ground that the government had earlier decided to fund the helicopter acquisition project entirely by way of equity but it funded the assessee to the extent of 45% only and accordingly,

the assessee shall not be penalized for the shortfall in deposits of Ministry of Finance. The assessee received funds of Rs.113.76 Crores against the project cost of Rs.250.90 crores, leaving a shortfall of Rs.137.14 crores.

7. Hence, the assessee did not claim the amount of interest in the profit and loss account as the Ministry of civil Aviation (MCA) had requested the Ministry of Finance for the waiver of interest and shown the same as contingent liability.

8. The Assessing Officer held that the company has claimed Rs. 24,34,72,443/- for the assessment year 1990-91 and Rs.23,79,41,269/- for the assessment year 1995-96 as a deduction in the computation of total income on account of interest due to Government of India. The Assessing Officer held that it has been mentioned that no entry in this regard has been made in the books of accounts as the company has requested to the Government for waiver of interest claimed on delayed deposits off the counter rupee fund on account of import of Westland Helicopters.

9. Before the AO, the company has submitted that the request has been turned down by the Ministry of Finance, Government of India vide letter dated 27.05.1997 and the company has been advised to deposit the counter rupee fund immediately in view of this claim of deduction should be treated as valid as it is an ascertained liability. The Assessing Officer held that the actual liability for the year has been verified by statutory and Comptroller and Auditors General of India (CAG)

and held that the claim is not admissible for the following reasons:

- a) The amount has not been provided for in the accounts.
- b) The liability has not been ascertained during the year under consideration as the company had applied for the waiver of this interest.
- c) The bifurcation of this sum under interest, inventory and counter rupees has not been provided by the company. Even in the letter of Ministry of Finance dated 27.05.1997, the actual amount to be deposited by the company as counter rupee has not been specified.
- d) In the absence of details furnished by the company it is not possible to identify whether any part of the claim represents capital expenditure.

10. Holding so, the amount of Rs.23,79,41,269/- was disallowed as a deduction claimed by the assessee company.

11. The Id. CIT (A) confirmed the addition.

12. Before us, the Id. AR submitted the correspondence between the Ministry of Finance and Ministry of Civil Aviation at PB 200 to 211 pertaining to letters dated 22.12.1995, 01.02.1996, 02.02.1996, 13.03.1996, 24.04.1996, 27.05.1997, 24.06.1998, 31.08.2001 and 31.01.2002. He argued that the amount claimed by the assessee is the definite liability but not the contingent liability. The liabilities have already been crystallized. It was also submitted that the assessee had requested for the waiver from the government but no such waiver/ reduction had been allowed. The assessee had brought

on record various correspondences which reflect that the government had been continuously insisting for the payment and it is clear that the central government had no intention of waiver of any portion of the interest due. It was also submitted that the interest had not been provided for in the books of accounts as per the comments of the statutory auditors in order to reflect the correct position of accounts. Thus, these amounts have been claimed in the computation of income.

13. The Id. DR argued that no such provision is allowed in the Income Tax Act 1961. The Id. DR strongly relied on the order of the authorities below.

14. Heard the arguments of both the parties and perused the material available on record.

15. In the present case, the assessee has taken the loan in the year 1986-87 and interest during that period was also allowed to the assessee as is evident from the assessment order and no disallowance has been made by the revenue. Further, no disallowances were made in A.Y. 1988-89 and A.Y. 1989-90 as is evident from the assessment orders. It is only then in AY 1990-91, in the impugned assessment year the AO has made the disallowance. It is also pertinent to note that subsequently also in A.Y. 1993-94, A.Y. 1994-95, A.Y. 2000-01 and A.Y. 2001-02 similar expenditure claimed by the assessee have been allowed as is evident from the assessment orders. This issue has been going on with the Ministry of Finance and from the correspondences placed at the PB Pg 200-211 it can be seen that the interest due to the government is payable and request

for the waiver have been rejected repeatedly by the Ministry of Finance. Thus, the liability pertains to the current year only and the assessee is following the mercantile system of accounting and thus the interest claimed by the assessee has to be allowed. The assessee has claimed similar expenditure in the following preceding assessment years as well as succeeding assessment years which have been allowed by the department and there being no deviation in the facts of the case in the present assessment year and the claim of interest expenditure made by the assessee has to be allowed.

16. On going through the entire factum of the case, we hereby hold that no disallowance is called for on account of interest payable to the Ministry of Finance.

Disallowance on Westland Helicopters:

The Ground No. 2 of the appeal for the A.Y. 1995-96

17. The assessee has claimed the depreciation of Rs.57,60,034/- on Westland Helicopters which are the part of block of assets. These assets had been acquired in 1986-87, however, the same were not used during the current assessment year. The AO at Page 12 Para 10 of the order has alleged that the depreciation claimed by the assessee is not allowable since the asset was not used in the current year.

18. The Id. CIT (A) confirmed the disallowance.

19. The facts in the instant case that the helicopters were acquired in 1986-87 and the assessee has been claiming the depreciation since then has not been in dispute. The AO has allowed the depreciation on helicopters in the earlier assessment years. This fact is also not disputed by the AO as well as CIT(A). Further, the assessee is following the concept of block of assets which were also not in qualm by the revenue.

20. 'Block of Assets' as defined by section 2(11) means, group of assets falling within a class of assets, comprising-

(a) tangible assets, being buildings, machinery, plant or furniture;

(b) intangible assets, being know-how, patents, copyrights, trade-marks, licenses, franchises or any other business or commercial rights of similar nature, [not being goodwill of a business or profession,

in respect of which the same percentage of depreciation is prescribed.

21. Thus, once an asset is part of the block of assets and depreciation is granted on that block, it cannot be denied in its subsequent year on the ground that one of the assets is not used by the assessee in some of the years. The concept "user" of assets has to apply upon block as a whole instead of an individual asset.

22. The Hon'ble Jurisdictional High Court in the case of Sony India (P.) Ltd vs CIT [2017] 88 taxmann.com 580 (Delhi) held that the assessee would be entitled to depreciation in respect of assets which were part of block of assets even if said assets had

not been put to use during relevant assessment year and had been sold prior to end of accounting year. Similarly, in the case of CIT vs Oswal Agro Mills Ltd. 341 ITR 467 (Del.) held that as per amended Section 32, deduction is to be allowed in the case of any block of assets, such percentage on the WDV thereof as may be prescribed as per Circular No. 469, dated 23.09.1986 thus it is difficult to accept the submission of the Revenue that for allowing the depreciation, user of each and every asset is essential even when a particular asset forms part of 'block of assets'. The Hon'ble High Court held that the Revenue is not put to any loss by adopting such method and allowing depreciation on a particular asset, forming part of the 'block of assets' even when that particular asset is not used in the relevant assessment year.

23. Thus, keeping in view, the judgments on allowability of depreciation on the "Block of Assets", we hereby hold that the assessee cannot be denied the benefit of depreciation claimed u/s 32 with regard to the Westland Helicopters.

24. In the result, both the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 14/07/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 14/07/2021

Subodh

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member